Michael E. Spreadbury
700 S. 4th Street
Hamilton, MT 59840
Telephone: (406) 363-3877
mspread@hotmail.com
Pro Se Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

Cause No.: CV-11-64-DWM-JCL

MICHAEL E. SPREADBURY	)	
Plaintiff	)	**OPPOSITION TO CITY**
v.	)	**DEFENDANT PLEADING**
BITTERROOT PUBLIC LIBRARY,	)	**IN RE: SUMMARY**
CITY OF HAMILTON,	)	**JUDGMENT**
LEE ENTERPRISES INC.,	)	
BOONE KARLBERG PC,	)	
Defendants	)	

Comes now Plaintiff with response to City, Public Library with respect to summary judgment before this Honorable Court.

Supporting concurrent Pleadings by Plaintiff

Plaintiff pleads motion to deny, continue, Rule 56(f), affidavit; disputed facts.

Motion:

Plaintiff moves court to deny Defendant City, Public Library motion for summary judgment due to material fact that remain per FRCP 56, and material facts to be obtained by discovery Rule 56(f) , inconsistency in witness statements supported by affidavit, summary judgment not proper as a matter of law.

Defense opposes this motion.

Brief in Support:

Pleading background.

Defendant City of Hamilton, Public Library submitted approximately 700 pages to Plaintiff week of Thanksgiving; while simultaneously obtaining confidential health information of Plaintiff, seeking confidential education information using full Social Security Number (SSN) of Plaintiff in furtherance of public fraud (TR. #49; *Notice of Fraud*) with an invalid subpoena with pretext of valid (e.g. exhibits A-C Plaintiff *Notice of Unlawful Activity* served upon court Nov. 4, 2011). In other words, Defendant Boone desired to distract a disabled IFP pro se in hopes of no response. Plaintiff will detail material facts, material issues in aforementioned which precludes summary judgment.

Plaintiff has made affidavit of November 21, 2011 indicating no criminal activity in Ravalli County Montana, nor has plaintiff admitted to any criminal conduct

(SODF #2, *Affidavit in Support of Rule 56(f)* #6 of 11/21/11 by Plaintiff). Since Defense counsel, Defendants wish to impute crime on Plaintiff without cause, this sworn statement was necessary (SODF# 2,8,18, 22, 24, 33, 34, 35, 36, 39, 40). Defendant Roddy imputed crime on Plaintiff November 4, 2009 as no probable cause, or crime existed saying "(She) thought she knew how to help (Plaintiff)." (SODF # 34).

Material issue: Immunity of Defense actors

Plaintiff has established in the record Defense lack of functional analysis of actors with respect to immunity *Morley v. Walker 175 F. 3d at 759 (9th Cir., 1999).* The lack of analysis for immunity for City Defense actors caused a noticeable rift between parties in the aforementioned, evident in the transcript (SODF #10, 17). The controlling authority from the US Supreme court dictates immunity needs to be settled "long before trial" *Mitchell v. Forsyth 427 US at 527-529 (1985).* Plaintiff asked court if Defendant Police officer can accuse a person of trespassing on public property, and the officer knew, or should have known that peaceful assembly in public parks has been a court authority since 1939; would deprive Plaintiff's fundamental rights (SODF # 18) *Hague v. CIO 301 US 496 (1939), Buckley v. Fitzsimmons 509 US 259(1993), Davis v. Scherer 468 US at 197(1984).* Immunity not established by Defense holds up discovery, and by proxy, summary judgment *Harlow v. Fitzgerald 457 US 800 (1982).*

Deception by Defendant Boone.

Within the current pleadings for summary judgment, Thomas J. Leonard *esq.* cites authority that a library can reject a library patron's first Amendment rights with respect to submissions using *US v. American Library Association 539 US at 210 (2003).* The problem is, this is an internet filter case, and the citation line does not mention anything about submissions to libraries by patrons as Plaintiff effected May 2009 at the Bitterroot Public Library.

Material Submissions at BPL:

At time of submission, meeting with Defendant Roddy May 29, 2009 the Bitterroot Public Library was acting under the American Library Association (ALA) "Right to read" policy (SODF # 3, Appendix C). Paraphrasing the 1950's statement from the ALA, only patrons of libraries can decide what they want to read, not librarians deciding for the patrons (SODF # 28; Exhibit C). In the aforementioned, the Bitterroot Public Library decided to censor the Plaintiff submission, deprive liberty interest via unlawful removal of privileges, and impute crime of trespassing on public property August 20, 2009, and other unlawful imputed crime (SODF # 3, 6, 7, 16, 28, 32, 35). Defendant City in motion for summary judgment admits Plaintiff submission letter to Defendant Public Library "describes widespread

corruption" and therefore gains highest rung of protected speech as public concern *Dunn & Bradstreet v. Greenmoss Builders Inc. 472 US 749 (1985).*

After denial of submission, Plaintiff submits "Request for Reconsideration" Form July 8, 2009 (Exhibit A, SODF #4); Public Library, instead of abiding by process, policy, Defendant Bitterroot Public Library sends first letter unlawfully banning Plaintiff via certified mail as policy is expected due to request to Library Staff Jo Frankfurter (SODF # 29). Written denial of Plaintiff submission occurs July 9, 2009 without referenced Defendant public library policy. Plaintiff requests policy from Frankfurter and is refused (SODF # 30). Bitterroot Public Library policy uses the ALA Library Bill of Rights (Exhibit B): written materials should be provided for "... interest, information, and enlightenment of all people, and the facility should resist censorship, resist abridgement of free expression, free access to ideas." The Bitterroot Public Library did not follow the ALA guidelines, adopted as Defendant public library policy in 2009 as Plaintiff submission given to public library *id.*

Defendant fails to offer defense for conspiracy to deprive Plaintiff rights:

The aforementioned is a cause for 42 USC § 1983 *inter alia* which is conspiracy to deprive civil rights, or federal laws *Monroe v. Pape 365 US 167 (1961).* Plaintiff

in 2nd Amended Complaint (TR. # 10) ¶ 25-27 prima facie evidence of Defendants acting in conspiracy to deprive Plaintiff established rights. Examples follow:

1. Bell unlawfully enters civil court to protect Roddy November 20, 2009.
2. Hamilton Judge Reardon enjoins protection order on Plaintiff making Roddy victim without findings of fact, conclusions of law in violation of Mont. R. Civ. P. 52(a) to deprive Plaintiff protected liberty interest to enter, use, or pass near Defendant public library.
3. City summons Plaintiff to court, Defendant Lee covers with headline, photo of Plaintiff to meet goal of defamation.
4. City pays for litigation expense of public library via municipal, public fraud.
5. Defendant Lee makes unlawful, defamatory call of threats without cause on Plaintiff, City violates Plaintiff liberty to enter Lee storefront open to public.
6. Public Library bans Plaintiff submission, City keeps submission as evidence at police station, accuses Plaintiff of trespass on public property.
7. Defendant Lee, City, Boone, public library defame Plaintiff in Joint Function; goal is reap injury on Plaintiff, interfere with ability to work, alter public perception of Plaintiff, interfere with election (public function test.)

Defendants in conspiracy to deprive Plaintiff established rights *Adickes v. SH Kress & Co. 398 US at 152 (1970).* Burden is on moving party to prove no

material facts remain Rule 56(c), *ibid at 159.* Defendant City fail in motion for summary judgment.

"Policy or Custom" establishes Municipal Liability

Plaintiff has pled municipal "policy or custom" in 2nd amended complaint (TR.#10) allows punitive damages as Defendant City official policy makers Bell, Oster made official municipal policy by actions, decisions described in the complaint *Monell v. NYC Dept. of Social Services 436 US 658 (1978).* As Bell made affidavit to summon Plaintiff to court for peaceful assembly on public property he knew or should have known action would violate Plaintiff fundamental right protected *Amendment 1 US Constitution, Hague.* As policymaker Oster decided to deprive Plaintiff liberty interest to enter Defendant Lee storefront open to the public knowingly, and without cause; sets municipal policy (SODF #26) *Monell.* As Policymaker Oster unlawfully enters Plaintiff residence October 4, 2011 (*see Plaintiff DVD exhibit served October 14, 2011*) as Probation officers had no reasonable suspicion to enter (SODF # 22) and called "everything ok (code 10-38)" called over police radio, Oster made municipal policy that City Police could unlawfully enter Plaintiff residence, deprive equal protection, liberty of Plaintiff (SODF # 22) *Griffin v. Wisconsin 483 US 868 (1987), Monell.* Defendant City of Hamilton liable for punitive damages for official policy that deprives Plaintiff established right; any decision of policymaker makes policy *Monell.* In *Adickes at*

153 the high court rejected the respondents summary judgment claim merely due to a location of a police officer in the Kress store not covered in an affidavit. Plaintiff has made affidavit on November 21, 2011 as to material facts sought from Defendants, inconsistencies in testimony reported by witnesses before this Honorable Court to deny summary judgment, or continue proceedings to allow discovery, interrogatories.

Defense Actors conspired to deprive right:

As Plaintiff sent letter of July 15, 2009 to City Police, Library, Library Board indicating knowledge of Montana Code Ann. MCA§ 22-1-311 (Use of Library-Privileges); reinstating privileges due to never being told of willful violation of rules, asked to leave Defendant Public Library, Defendants did not respond to Plaintiff (SODF # 5, 7, 8). Plaintiff did not enter public library after July 10, 2009 (SODF # 27). As plaintiff assembled in gazebo on west commons of Public Library accused of criminal trespass on public property by Defendant Snavely Hamilton Montana Police (SODF #1, 2, 6, 8,18). Plaintiff prosecuted by Defendant city for criminal trespass on public property a deprivation of established right by Defendants having position of power over Plaintiff, which knowingly caused much stress, actionable under IIED, NIED pled by Plaintiff (TR. #10 ¶ 78-86 , SODF # 13, 21).

Inconsistent Statements by Defendants, Witnesses:

Witness Jo Frankfurter recounted interaction with Plaintiff creatively, and improperly (SODF # 29, 30); a court case seeks facts, not creative writing. The court should take notice of cleft face, speech impediment of Frankforter, motive to lash out at Plaintiff without cause, not tell the truth about the refusal to remit public library policy to Plaintiff on or around July 10, 2009, impute improper behavior on Plaintiff as Frankforter failed to ask Plaintiff to alter behavior, or ask Plaintiff to leave public library (SODF # 2, 8, 11). Frankforter described Plaintiff as "pathetic" for asking for library policy, not remitted by Frankforter, promised in Defendant public library director's July 9, 2009 correspondence to Plaintiff. Frankforter's inability to perform simple task to assert behavior problems, follow public library policy, yet Frankforter authored "incident report" at Bitterroot Public Library (see discovery of trespass trial sent by Defendant Bell). Sworn deposition of Frankfurter of July 10, 2009 interaction with Plaintiff should cure the inconsistency of statements from Frankforter (discovery pending; motion to deny summary judgment, affidavit of inconsistencies concurrent with this pleading).

Mayor Jerry Steele's account of a conversation in Hamilton City Hall with Dick White and Lorraine Crotty, residents of Hamilton, MT is not consistent. Steele was reported to have said "We know (Plaintiff) is schizophrenic" although Defense accounts attempt an attempt at simile, claiming Steele uttered an example of

inconsistency: "like a schizophrenic". Slander is defined in Montana Code Ann. MCA§ 21-1-803(2) "imputes in a person the present existence of an infectious, contagious, or loathsome disease." The Montana defamation statute qualify this characterization by Defendant Jerry Steele directly injures the Plaintiff (SODF # 14, 15). Since a witness, defendant in aforementioned offer differing accounts, supported by affidavit of November 21, 2011 Plaintiff urges court to deny Defendant City motion for summary judgment, continue proceedings for discovery, interrogatories by Rule 56(f) motion and supporting affidavit (e.g. see ¶ # 3,4 of 11/21/11 affidavit).

Disputed facts remain:

Defendant City, public library impute need to protect staff from Plaintiff is pretext to known deprivation of Plaintiff established right *Lowe v. City of Monrovia 755 F. 2d 998 (9th Cir., 1985).* Plaintiff was issued "public trust" national security clearance Jan 2008 by the US Dept. of Homeland Security (see exhibit A, *Notice of National Security Clearance* (served on court 10/14/2011)). Plaintiff further affiants no criminal activity in Ravalli County, or near, around, or in the Bitterroot Public Library (SODF # 2, 37; *Affidavit of Plaintiff* November 21, 2011 #6). These disputed facts between parties may not be decided by motion for summary judgment *Harlow v. Fitzgerald 457 US at 816 (1982).* Plaintiff identifies

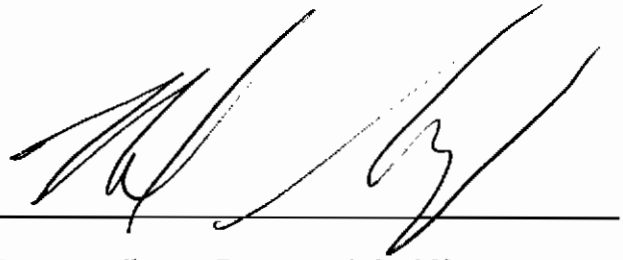
'questions of subjective intent' present in the aforementioned that cannot be decided on summary judgment *id.*

The Advisory Committee for §1 for 42 USC §1983 found:

> *where the evidentiary matter in support of the motion does not establish the absence of genuine fact, summary judgment must be denied even if no evidentiary matter is presented.*
>
> *Monell v.* NYC *Dept. of Social Services 436 US 658 (1978)*

Plantiff presents to the court issue of material fact, Statement of Disputed Facts (SODF), Affidavit in Support of Rule 56 (f), Motion for Continuance, Denial of Defendant City/Public Library motion for summary judgment on State, Federal claims. Plaintiff pleads in good faith, court should deny Defense motions.

Respectfully submitted this 23rd day of November, 2011



Michael E. Spreadbury, Pro Se Plaintiff

Note: Attach Exhibits A, B, C (7 total exhibit pages)